



The Coalition for Government Procurement

Comments for MAS Advisory Panel
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On behalf of the Coalition for Government Procurement I would like to thank you for the opportunity to present some thoughts and observations concerning today's topic of "fair and reasonable pricing". The Coalition for Government Procurement is a non-profit association of over 330 companies that sell commercial services and products to the federal government primarily through MAS contracts and GWACs. Our membership includes small and large businesses and accounts for 70% of sales on the GSA schedule program.

FAIR AND REASONABLE VS MOST FAVORED CUSTOMER PRICING (see attachment 1)

Let us begin by identifying the inconsistencies that exist across the schedules program regarding what is required for pricing.

The overriding guidance that GSA contract officers should use to determine the offeror's best price is contained in its own Guidance Document, the GSAM. The GSAM states that "The Government will seek to obtain the offeror's best price (the best price given to the most favored customer), however, the Government recognizes that the terms and conditions of commercial sales may vary and there may be legitimate reasons why the best price is not achieved."

Examples of inconsistency between schedule contract requirements

1) GSA IT Schedule 70 - the GSA IT Schedule 70 requests that industry provide fair and reasonable pricing, and yet must disclose if the pricing offered "is equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions?" As was presented by Tony Fuller of Beers and Cutler on May 22, 2008 to the MAS Advisory panel, evidence within commercial firms is that this kind of information is in most cases unavailable or simply does not exist. Therefore, the appropriate answer to this question

most typically is "No" A response that frequently entails hiring a lawyer to assist the responding firm to explain why the contractor cannot offer the same discounted price, presuming there is one and it can be identified, not just for the initial award but as a continuing basis of award for subsequent option periods

2) Management Consulting Organization and Business Improvement Services Contract (MOBIS) - the MOBIS contract requests that GSA "Obtain equal to or better than the Most Favored Customer (MFC) pricing with the same or similar terms and conditions"

In addition, the U S Government Accountability Office has specifically recommended that "the price analysis GSA does to establish the Government's MAS negotiation objective should start with the best discount given to any of the vendor's customers ""

So which is it?

Most favored customer [MFC] is a negotiation strategy not a requirement of law The GSA Schedules program and its relative requirements have not been looked at in full detail in 20+ years, and the pricing practice has become archaic and burdensome In today's environment, and rapid fire responses by commercial and government, it is inconceivable that Industry has systems dynamic enough to monitor a price of a single product or service on any given day to the level of detail that is presumed by the Most Favored Customer pricing provision, when realistically Fair and Reasonable pricing is the true objective

HOW TO DETERMINE FAIR AND REASONABLE PRICING?

We agree with the assessment of the Chairman of this panel that products and services pricing should be considered separately Labor (a person) is not to be compared to a pencil They are not produced on a conveyor belt and shipped out in bulk to a store to be procured off a shelf Therefore, discussion on determining Fair and Reasonable pricing for products vice services will be provided separately herein

PRODUCTS

Before anyone can begin to determine if an offer contains a "fair and reasonable price", there must be a determination of size and scope of an individual purchase A purchase of a small number of items may not receive the same price as a large volume purchase Further, among the various manufacturers (hardware, software) the effects of a volume purchase may be significantly different A hardware purchase may not always benefit from a dramatically lower price for a volume purchase due to market pressures, component costs, component availability, etc Similarly, a volume purchase for software may vary due to factors such as manufacturing costs, intellectual property agreements, licensing arrangements, etc

We must also remember that comparing volume purchases between even similar manufacturers can quickly become a frustrating exercise Different manufacturers may have very different factors and weighting of these factors that affect their ability to provide volume discounts The government can not expect to receive the same percentage discount from all, or even similar, manufacturers

There is also the question of comparing scope when determining if a there is fair and reasonable prices. When the purchase may be for thousands of a particular item, the reality may be that the components within the final product may be very different with very different specifications due to customer need and requirements. There may also be a dramatic difference in additional requirements for integration, delivery and other required services.

Government customers also need to realize that "fair and reasonable prices" when compared to commercial prices may not be lower due to the much higher cost of doing business with the government (ex TAA, Energy Star, 508, and other unique requirements of the Government). What can be a very simple order for a large volume of systems to a large corporation (Commercial buy) oftentimes carries significant additional requirements when the same purchase is made by a government agency.

It also needs to be expressed clearly that "fair and reasonable price" does NOT mean the lowest price. It means just what it says, a price that is fair for both sides and reasonable for the goods or services being procured and are similar in size and scope.

What has not been presented to the panel so far pertains to pricing of products which is set by other methods such as catalog pricing which offer off list prices, pricing which is set by the market and allowed to fluctuate up or down, or a reseller or dealer's price which may be set by a negotiated markup over cost.

The unique nature of the GSA Schedule is that prices are set for quantity one with the potential and flexibility for negotiation on every order. With many (if not most) Schedules having a negotiated maximum markup, the government is able to benefit from the price fluctuations in the offeror's costs and is encouraged to seek further reductions in price, referred to as a "Spot Price Discount".

The level of effort expended to determine price reasonableness for a buy should be appropriate with its circumstance. For example, price and urgency are two factors to consider when making that determination. It's not practical to unreasonably delay a purchase due to price if greater costs are being incurred because the item is not acquired. It's also not cost effective to incur the costs to evaluate multiple proposals for a relatively low dollar purchase.

A best practice across many agencies is to negotiate flexible agreements for a full range of items at reasonable price with reliable suppliers and then establish rules for these suppliers to compete for your business. Both you and your supplier have an equal right to engage in hard bargaining. At the same time, the ultimate success of your agency depends upon two-way cooperation and a desire by both parties to establish and maintain a mutually advantageous business relationship. If a supplier is unwilling to negotiate or is consistently priced higher than your other suppliers when conducting competed purchases, this supplier is a candidate for replacement.

Other items to be considered when evaluating/determining fair and reasonable pricing for products

- **Volume (Fixed Unit/Revenue or IDIQ)**
- **Mandatory or Non Mandatory**

- **Exclusive or Non-Exclusive (Multi-vendor award)**
- **Standard/Fixed Configuration vs. Multi/Catalog**
- **Discount off List vs. Fixed Price**
- **Contract Terms & Conditions**
- **Reseller, VAR, or Integrator responsibilities**
- **Buying in bulk (be careful what you ask for here)**
- **Taking advantage of full lines of products or services (ex. ESI)**
- **Avoiding unique requirements or specifications (to include specifying brand name)**
- **Using existing commercial distribution systems**
- **And many others**

SERVICES

When seeking fair and reasonable pricing for Services, one must consider multiple factors such as geographic location of the service being provided (a labor rate in Louisiana vs a labor rate in Northern Virginia for the same service could be quite a drastic difference), the education, experience and qualifications for a Senior Program Manager from one company may be significantly different from another company, the complexity of the work provided under one task can be drastically different than that of another task, the duration of the task may warrant different discounting per task, and the ability to pull an individual "off the bench" vs charging to "overhead" may also constitute a discounted rate. All of the above factors would trigger the price reductions clause if the labor category is covered on the GSA Schedule and the pricing was based on a Most Favored Customer.

We have heard the panel during presentations and deliberations recommend standardizing/commoditizing Labor Categories and require Industry to map their categories to them. Please note that it is not our recommendation to standardize labor categories. *Additionally, commoditizing labor categories will minimize the benefits of value based and performance based awards.* We are concerned that if this practice is promoted that services may end up being removed from the Schedules program as they will no longer be based on commercial labor categories. In no case, however, could there be a Most Favored Customer pricing mechanism as there would no longer be a commercial labor category that could be used as a basis to compare a pricing methodology to.

OTHER POINTS TO BE NOTED

- MFC is often incorrectly associated with IDIQ contract, its best application may be on requirement contracts
- GSA Schedule contracts are not requirement contracts and the parallels drawn to the purchase practices of large commercial organizations like Wal-mart are misleading and fail to consider the differences between IDIQ and requirements contracts
- The GSA Schedules are about price – not cost
- As an Association we do not believe the Price Reduction Clause is an appropriate contract provision. The use of the clause on long term IDIQ contracts appears to be a practice only exercised by GSA.

- The basis of award should be documented and possibly even included in the contract award; a record needs to be provided to client users so that they can then reasonably pursue discounts and pricing adjustments reflective of their requirement . We are not suggesting detailed price data but the premise [unit of 1 concept applied to services].

- GSA is responsible for monitoring the use of schedules, it is not responsible for the decisions and determinations made by client agency or acquisition partners

- At the schedules contract level the GSA IG is a support pricing role to the CO, not an authorized negotiator.

- The Schedules offer the Government an opportunity to meet the expectations of the taxpayers, the Hill, and the client agency by providing for an effective and efficient contracting process for products or services.

Therefore, we submit and emphasize the reality is that the final price paid by the ordering activity is handled at the Task Order or Delivery Order level and the schedule price is simply a Not to Exceed price, which has nevertheless been determined to be fair and reasonable for a certain level of acquisition

We would also like to add that any examples provided above are not exhaustive but are offered only as a comparison by which to inform this panel I am certain that many of my colleagues in this room are willing to provide volumes of examples but we are only provided a limited amount of time to provide our input to you

Attachment 1

MOBIS Pricing Language

(c) Section III – *Price Proposal*

(1) GSA's pricing goal Obtain equal to or better than the Most Favored Customer (MFC) pricing

with the same or similar terms and conditions The U S Government Accountability Office has

specifically recommended that "the price analysis GSA does to establish the Government's MAS

negotiation objective should start with the best discount given to any of the vendor's customers "

GSA seeks to obtain the offeror's best price based on its evaluation of discounts, terms, conditions, and concessions offered to commercial customers If the MFC is a Federal agency,

but sales exist to commercial clients, identify which, if any, of the commercial clients obtain the

best price This will allow the Government to establish a "basis for award" customer in accordance with the Price Reductions Clause 552 238-75, paragraph (a)

(2) The offeror shall propose a pricing structure consistent with its commercial practices and

provide supporting documentation (See paragraph (12) below) Pricing shall be submitted and

clearly identified as being based either on a "Commercial Price List" or on "Commercial Market

Price," as defined in FAR 2 101 ("Catalog Price" and "Market Prices" under the definition of

"Commercial Item") Submit an electronic copy of the proposed pricing

(i) As part of the Price Proposal Offeror shall outline all services being proposed At a minimum, the offeror should provide the following information

(A) SIN(s) proposed

(B) Service/Product proposed

(C) MFC/Best commercial customer

(D) MFC/Best commercial customer price

(E) Discount % offered to MFC/Best commercial customer

(F) Discount % offered to GSA

(G) Prices offered to GSA (excluding IFF)

(H) Prices offered to GSA (including IFF)

GSAM

538.270 Evaluation of multiple award schedule (MAS) offers.

(a) The Government will seek to obtain the offeror's best price (the best price given to the most favored customer) However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved

(b) Establish negotiation objectives based on a review of relevant data and determine price reasonableness

(c) When establishing negotiation objectives and determining price reasonableness, compare the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror's commercial customers. When determining the Government's price negotiation objectives, consider the following factors:

- (1) Aggregate volume of anticipated purchases
- (2) The purchase of a minimum quantity or a pattern of historic purchases
- (3) Prices taking into consideration any combination of discounts and concessions offered to commercial customers
- (4) Length of the contract period
- (5) Warranties, training, and/or maintenance included in the purchase price or provided at additional cost to the product prices
- (6) Ordering and delivery practices
- (7) Any other relevant information, including differences between the MAS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the most favored commercial customer(s). For example, an offeror may incur more expense selling to the Government than to the customer who receives the offeror's best price, or the customer (e.g., dealer, distributor, original equipment manufacturer, other reseller) who receives the best price may perform certain value-added functions for the offeror that the Government does not perform. In such cases, some reduction in the discount given to the Government may be appropriate. If the best price is not offered to the Government, you should ask the offeror to identify and explain the reason for any differences. Do not require offerors to provide detailed cost breakdowns.

(d) You may award a contract containing pricing which is less favorable than the best price the offeror extends to any commercial customer for similar purchases if you make a determination that both of the following conditions exist:

- (1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated
- (2) Award is otherwise in the best interest of the Government

Refresh 22 **COMMERCIAL SALES PRACTICES FORMAT (CSP-1)**

(3) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES _____ NO _____ (See definition of "concession" and "discount" in 552 212-70)